

193A—13.8 (542) Rules applicable to tax practice.

13.8(1) CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter and, more specifically, with respect to tax services, this rule shall apply to CPAs and LPAs who are licensed in Iowa and to CPAs exercising a practice privilege in Iowa whenever such persons inform the client or prospective client that they are a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or E-mail. Clients and prospective clients who select a tax professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules. A licensee shall not render services in the area of taxation unless the licensee has complied with Statements on Responsibilities in Tax Practice (SRTP), Internal Revenue Service Treasury Department Circular 230, Iowa department of revenue rules, and the Iowa Code.

13.8(2) Professional judgment—tax position. The licensee may resolve doubt in favor of the licensee's client as long as there is reasonable support for the client's tax return position. The licensee shall in good faith believe that the client's tax return position is warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law. The licensees shall in good faith believe that:

a. The position has a realistic possibility of being sustained administratively or judicially on its merits if challenged.

b. The position is appropriately disclosed.

c. The taxpayer is advised regarding potential penalty consequences of the tax return position.

d. In addition to a duty to the taxpayer, the licensee has a duty to the tax system.

13.8(3) Licensees shall provide the following form and content of advice to taxpayers:

a. Establish the relevant background facts.

b. Consider the reasonableness of the assumptions and representations.

c. Apply the pertinent authorities to the relevant facts.

d. Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction.

e. Arrive at a conclusion supported by the authorities.

13.8(4) Before signing as preparer, a licensee shall make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return.

a. The licensee must exercise due diligence in preparing, or assisting in the preparation of, approving, and filing tax returns.

b. A licensee shall perform due diligence in determining the correctness of oral or written representations made by the client.

13.8(5) Contingent fee.

a. A licensee may charge a contingent fee for services rendered in connection with the examination of, or challenge to:

(1) An original tax return, or

(2) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer's receiving a written notice of the examination of, or a written challenge to, the original tax return.

b. A licensee may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service or other governmental agency, or in a judicial proceeding.

c. A licensee may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Service.

13.8(6) Return of client's records.

a. At the request of a client, a licensee must promptly return any and all records of the client that are necessary for the client to comply with the client's tax obligations.

b. Records of the client include all documents, written or electronic, provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

13.8(7) Conflict of interest.

a. A licensee shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

- (1) The representation of one client will be directly adverse to another client, or
- (2) There is significant risk that the representation of one or more clients will be materially limited by the licensee's responsibilities to another client, a former client, or a third person, or by a personal interest of the licensee.

b. Notwithstanding the existence of a conflict of interest under paragraph "*a*" of this subrule, the licensee may represent a client if:

- (1) The licensee reasonably believes that the licensee will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law; and
- (3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the licensee. Copies of consents must be retained for at least 36 months from the date of the conclusion of the representation of the affected clients.